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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

72-69

KENNETH T. BOSLEY AND PHYLLIS B. BOSLEY,
HIS WIFE,

Petitioners,

v.

ATLANTIC SEABOARD CORPORATION,
a Delaware Corporation
engaged in interstate
commerce in Maryland,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Kenneth T. Bosley
and
Phyllis B. Bosley
Box 334
Cockeysville, Md. 21030

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. .....

Kenneth T. & Phyllis B. Bosley,

Petitioners

v.

Atlantic Seaboard Corporation

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above entitled case on

August 7, 1972.

(Case No. 72-1453 in Court of Appeals)

OPINIONS BELOW

The opinions and orders of the Courts below are as follows:

1. Verified Bill of Costs for $1,430.52 approved by the Clerk of the District Court, in part, on November 16, 1971.
2. Order of the District Court, Judge Kaufman, dated November 17, 1971, a-firming costs of $1,125.52.
3. Order of the U. S. Court of Appeals, 4th Circuit, afirming award of cost against the plaintiff, dated August 7, 1972.

JURISDICTION

The judgement of the Court of Appeals was entered on August 7, 1972. The jurisdiction of the Court is involved under 28 U.S.C., Section 1254.(1).

STATUTES AND REGULATIONS INVOLVED

This case involves the Constitution of the United States, Rule 71A, Section (1), Federal Rules of Civil Procedure, also Section 7 of the Natural Gas Act, Title 15, U.S.C., Section 717F. Other acts of Congress involved are the Environmental Protection Act of 1970.

SUMMARY OF FACTS

This action in tort originally filed in the State Court by the Petitioner claimed unusual and excessive damages to a parcel of land caused by the construction for a 28 inch pipe of a gas pipe line easement 100 foot wide through the property. Such right of way for the pipe line was obtained after two condemnation cases were filed by the Atlantic Seaboard Corporation. See copy in Appendix A. Atlantic Seaboard is a part of the Columbia Gas Systems which has over 43,000 miles of pipeline and over 12,000 employees. Atlantic Seaboard, a foreign corporation to Maryland, maintains cross-country pipe lines which supply the entire City of Baltimore.

Removal to the Federal Court was made by Mr. Tilford Jones, new counsel for Atlantic Seaboard, after Mr. Benjamin Howard, Esquire, was discharged as counsel in the State Court.

The damage claimed by the Petitioner was that the right of way was not maintained and that the Bosley farm land was under water part of the year, and that the level of the ground shrunk and eroded away after construction and that the corporation had a duty to perform under the right of way agreement. One of the defenses raised by Atlantic Seaboard was that their contractor, Rivers Construction Corporation, Fort Worth, Texas, was responsible. The contractor was not made a party to this action and this argument was raised and overruled by the Lower Court in pre-trial proceedings.

Although the Appellants, Bosleys, had obtained an estimate of hauling in soil and re-seeding and

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re-grading from Clarence L. Cofeill, a local contractor, in the amount of $2,250.00, the Lower Court would only allow loss of the fair market value of the land as damage. Therefore, Mr. Cofeill could not testify for the Bosleys. The property includes the Western Run River and it is at this river crossing of the pipe line that this unusual and excessive damage occurred.

The trial lasted seven (7) days. The plaintiffs could only produce two witnesses to testify. They were Mr. Bosley, one of the property owners, and Mr. Herbert, an engineer who had made a topographical survey of the pipe line ground level before and after construction ground settlement.

Although counsel for Atlantic Seaboard informed the Court only two days would be needed for trial, Mr. Jones's extensive cross-examination of the plaintiff's witness and direct examination of the five corporate officials dragged out the case to seven days.

Thereafter, Atlantic Seaboard Corporation filed a verified Bill of Cost in the amount of $1,430.52. This bill included $88.82 for photographs taken by one of Atlantic Seaboard Corporation's office clerks.

In addition, there was a charge of $62.40 for photograph exhibits to the deposition for the same photographs referred to above. A charge of $148.72 for extensive depositions of the plaintiff's two witnesses (length 180 pages); also a $118.00 charge for fees to obtain the transcript of the plaintiff testimony so that this could be used for extensive cross examination.

A charge of $931.80 was made by Atlantic Seaboard Corporation for witnesses' fees even though the witnesses were sequestered at the trial. One witness who testified only a short time had an office that was within two blocks of the Court House was allowed a fee of $61.80.

The Petitioners' case involved approximately 6 hours of trial. Atlantic Seaboard prolonged the trial by bringing their corporate officials

as witnesses. None of the actual maintenance personnel or right of way foremen were called. No one actually engaged in regular activity with the company over the property was involved. Only the tudor : top brass were utilized in the trial.

The Atlantic Seaboard Corporation expended approximately three times the amount of time at trial compared to the petitioner's time. (See ~~Appendix B~~, Chronology of Witnesses), P.6

The Atlantic Seaboard Corporation has sought to vexatiously tax this petitioner in the Lower Court for $1,430.52. The Atlantic Seaboard Corporation is a natural gas company engaged in interstate commerce and is subject to the jurisdiction of the Federal Power Commission. Under the circumstances of taking the petitioner's property for a gas line can this gas company then enforce a judgement for cost in a case that sought to restore damages done to the land after entry based upon the power of condemnation?

The Fifth Amendment states, "nor shall private property be taken for public use without just compensation."

The second issue involved is whether such costs should be taxed allowing compensation to the corporate officers and officials of the Atlantic Seaboard Corporation who were under salary employment with the company at all times during the trial. (This case is not an anti-trust action.)

The third issue presented is should excessive costs be taxed when the corporation's counsel, Mr. Tilford Jones, has so conducted the trial so as to multiply the proceeding, thus requiring that this attorney should personally satisfy such additional costs. Therefore, the question of the necessity of costs is raised.

The final issue developed is the question of pipe lines raping the land and the environment without the company's restoring and doing everything possible to hold the soil.

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LIST OF ATLANTIC SEABOARD CORPORATION, DEFENDANTS, OFFICIALS AND AGENTS USED AS WITNESSES

	DAYS AWAITING WITHIN COURT TO TESTIFY	APPROX. TIME SPENT IN TESTIFYING	DAYS CHARGED FOR COST
1. C. P. Brisley, Vice President (Lives in Charleston, W. Va., but usual business requires travel all over pipe line in Maryland and W. Va.)	3	4½ hrs.	6
2. D. C. Kitts, Chief Surveyor (Lives in Charleston, W. Va., but usual business requires travel to work over pipe lines in Maryland).	6	2 hrs. 20 min.	6
3. Dr. A. C. Donaldson, Geologist (Lives in Morgantown, W. Va., usual business requires travel all over east coast).	7	2 hrs. 10 min.	6
*4. B. H. Waterbury, Realtor (Office is 2 blocks from the Court House).	6	2½ hrs.	3
*5. Joseph E. Fisher, Superintendant (Lives in Gaithersburg, Md., but usual business requires travel over entire pipe line area). (Drives a corporation car and transported all Atlantic Seaboard officials to the Court - one of the reasons he was last to testify).	7	4 hrs.	5

ALL DEFENDANT WITNESSES WERE SEQUESTERED.

* When pressing business occurred these witnesses left for that day.

CHRONOLOGY OF WITNESSES DURING TRIAL

DATE	REPORTER	WITNESS	APPROX. TIME SPENT ON EXAMINATION	APPROX. TIME SPENT ON CROSS EXAMINATION
1. 10/04/71	Mrs. Elgin	Open statement and viewing property		
------ Plaintiff's Witnesses ------				
2. 10/05/71 (½ day)	Mrs. Elgin	K.T. Bosley	1 hr.	2 hrs.
3. 10/06/71	Mr. Sapperstein	K.T. Bosley	----	2 hrs.
		Russell Herbert Plaintiff's Surveyor	1 hr.	2½ hrs.
		TOTAL	2 hrs.	6½ hrs.
------ Atlantic Seaboard's Defense ------				
		Brisley, V. P.	1 hr.	
4. 10/07/71	Mr. Betz	Herbert (Redirect)		1 hr.
		Brisley, V. P.	2 hrs.	½ hr.
5. 10/08/71	No reporter available	Court Dismissed		
6. 10/12/71	Mr. Sapperstein	Herbert (Redirect)		½ hr.
		Brisley	1 hr.	
		Kitts, Sup. of Surveys	2 hrs.	20 min.
		Waterbury Realtor	2 hrs.	½ hr.

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10/13/71	Mr. Betz	Fisher Gen. Sup.	2 hrs.	30 min.
		Dr. Donaldson	2 hrs.	10 min.
10/14/71	Mr. Betz	Closing Arguments and etc.		
		TOTAL	12 hrs.	3½ hrs.

Totals - 8 Days

2 for Plaintiff
5 for Defendant Corporation

Approx. Total Time by Plaintiff Atty. - 5½ hrs.
Approx. Total Time by Corp. Atty. (Jones) - 18½ hrs.

ATLANTIC SEABOARD WITNESS FEES

	ATTENDANCE DAYS/	COST	SUBSISTENCE DAYS/	TOTAL	MILEAGE MILES/	COST	TOTAL
1. C.P. Brisley, Vice President Charleston, W. Va.	6	$120.	5	$80.	400	$40.	$240.00
2. Donald C. Kitts, Chief Surveyor Charleston, W. Va.	6	$120.	5	$80.	400	$40.	$240.00
3. Dr. Alan Donaldson, Geologist Morgantown, W. Va.	6	$120.	5	$80.	400	$40.	$240.00
4. B.H. Waterbury, Jr., First Nat'l. Bank Bldg., Light & Redwood Sts., Baltimore, Md.	3	$ 60.	-	----	18	$1.80	$ 61.80
5. Joseph E. Fisher Gaithersburg, Md.	5	$100.	-	----	500	$50.	$150.00
				TOTAL			$931.80

TOTALS

Fees for witnesses	$931.80
Depositions taken by Atlantic Seaboard	148.72
Removal Bond	10.00
Transportation	35.00
Docket Fee	20.00
	$1,150.52

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REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED TO ASSURE THAT PIPE LINE COMPANIES DO NOT EXCESSIVELY DAMAGE OR TAKE PRIVATE PROPERTY WITHOUT JUST COMPENSATION AS PROTECTED BY THE FIFTH AMENDMENT IN THE CONSTITUTION. [1]

This case presents a fundamental constitutional question which was presented to the Court of Appeals and decided with discussion against the petitioners: does the fifth amendment in the constitution, "nor shall private property be taken for public use without just compensation." In this age of the bulldozer and ever growing placement of large intra-state pipe lines, the natural gas companies, like the railroads of the 1850's to 1900's, private property is being taken without just compensation. The pipe line company fails to "rip rap" the river bank that was torn away during construction and fails to restore the level of the soil over the pipe line after entry upon the land based upon the power of condemnation. (See Extract A - Petition for Condemnation).

The burden is too great to prove "negligence" caused by the line companies. One property owner against a company with over 12,000 employees, some of whom testify "that this is the usual procedure for pipe line construction.

This was the first pipe line the petitioners had ever seen constructed. Our world is in a new era of "an invisible industry" buried underground. The size of the pipes that can be installed gets larger each year and the damages that occur to property owners surmount.

In this case the property owners were taxed $1,430.52 in 1971. The Fifth Amendment was effective December 15, 1791.

CERTIORARI SHOULD BE GRANTED TO ASSURE THAT COSTS THAT ARE TAXED DO NOT ALLOW COMPENSATION TO PIPE LINE CORPORATE OFFICIALS WHO ARE ALSO DRAWING SALARY AND COMPENSATION FROM THEIR COMPANY.

[1] Also FRCP, Rule 71 A, Sec. 1, Costs

During the trial in the Lower Court, company officials drove in corporate, two-way radio operated automobiles, and conducted their normal business in the State of Maryland. Since the petitioners originally filed suit in the State Court, subsequent to the condemnation case, only normal state court costs were expected. The State of Maryland Courts have no witness fee. However, the pipe line company filed a petition for removal to the Federal Court (See Appendix E, Docket Entries).

CERTIORARI SHOULD ALSO BE GRANTED TO ASSURE PROTECTION OF OUR ENVIRONMENT WHICH IS NOW BEING RAVISHED BY PIPE LINE COMPANIES.

The Environmental Protection Act of 1969 requires that all agencies of the government and industry take measures to assure protection of our future. The Atlantic Seaboard Corporation failed to "rip rap" the river banks of the petitioner's property and to restore the level of the land. The property took the appearance of a strip of mine area after construction entry based upon the power of condemnation.

Certiorari should be granted so that the pipe line companies in the future, including the Alaska venture, comply with the environmental protection act of Congress. On January 7, 1971, Mr. Clarence L. Cofeill, Contractor, Reisterstown, Maryland prepared an estimate citing 963 yards of soil would be required to be hauled into the petitioner's property to restore the land to previous rise.

CERTIORARI SHOULD BE GRANTED TO ASSURE THAT COSTS ARE NOT VEXIOUSILY MULTIPLIED IN A PROCEEDING SO THAT PROPERTY OWNERS ARE HEAVILY TAXED AND MUST SELL THEIR PROPERTY AT A TAX SALE.

The attorney for the Atlantic Seaboard Corporation vexiously multiplyed the proceedings so as to tax the petitioner and to charge his clients more. Mr. Jones boasted proudly at the trial that his fee

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to the pipe line company would be more than the property is worth. Mr. Jones was assisted by Mr. Mogel and Mr. Morgan, assistant attorneys. The petitioners could only afford one attorney and one expert. The pipe line company had three attorneys and five expert witnesses. The table enclosed, Appendix , shows that approximately 16½ hours of extensive cross examination and repetition was conducted by Mr. Jones for the pipe line company. The petitioner's attorney, Mr. Taylor, wisely kept his testimony to approximately 5½ hours.

The Lower Court erred by not requiring the attorney, Mr. Jones, to personally satisfy such additional costs that were not necessary as provided by Title 28, Section 1927, U.S. Code, Counsel's liability for excessive costs.

In addition, five expert witnesses as called by Atlantic Seaboard is excessive and unnecessary. None of the maintenance personnel engaged in the actual work over the pipe line were called as witnesses. These people live in Maryland.

CONCLUSION

WHEREFORE, for the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

Kenneth F. Bosley, J.D.
and
Phyllis B. Bosley, M.A.
Box 334
Cockeysville, Md.
21030
In proper person

EXTRACT OF PETITION FOR CONDEMNATION

Atlantic Seaboard Corp. Petitioner	*	In the Circuit Court For
vs.	*	Baltimore County
Kenneth T. Bosley and Phyllis B. Bosley, His Wife	*	At Law Case No. 1249 Docket 7 Page 142

* * * * * * * * * * *

PETITION FOR CONDEMNATION

The petitioner, Atlantic Seaboard Corporation, a Delaware Corporation, by Charles C. G. Evans, its attorney, respectfully represents as follows:

1. Petitioner, Atlantic Seaboard Corporation, is a corporation organized under the laws of the State of Delaware with its principal office in the City of Charleston, West Virginia, and is a natural gas company as defined in Section 2 of the Natural Gas Act (Section 717A, Title 15, U.S.C.; Act of June 21, 1938, c. 556, § 2, 52 Stat. 821). Petitioner is engaged in the transportation of natural gas in interstate commerce and in the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial and industrial use, and as engaged in such activities, petitioner is subject to the jurisdiction of the Federal power Commission.

2. This is a law action brought for the taking of property of eminent domain and for the ascertainment and award of just compensation to the owners thereof. The authority for the taking for which this action is brought is Section 7 of the Natural Gas Act (Section 717f, Title 15, U.S.C.), as amended by Act of February 7, 1942, c. 49, 56 Stat. 83, and by Act of July 25, 1947, c. 333, 61 Stat. 459, and a temporary certificate of public convenience and necessity issued to petitioner by the Commission under said Section 7 of the Natural Gas Act, as amended as aforesaid, for the construction and operation of facilities, as hereinafter related in paragraph number 3 hereof.

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* * * * *

5. Kenneth T. Bosley and Phyllis B. Bosley, his wife, are the owners of the land sought to be condemned (hereinafter sometimes called Subject Land) as tenants by the entireties, by virtue of that certain deed executed, dated October 1, 1959, and recorded among the Land Records of said County in Liber W.J.R. No. 3616, folio 196;

* * * * *

6. The nature of the interests sought to be condemned by this action over and through the land described in paragraph number 5 hereof is a necessary right of way by petitioner for itself, its successors and assigns, forever, to construct, lay, maintain, operate and remove the 26-inch pipeline between Owings Mills and Manor Road, Baltimore County, Maryland, described in paragraph number 3 hereof, for the transportation of natural gas, and for the appurtenances necessary to operate said pipeline. * * * * *

* * * * *

s/ _____

Charles C. G. Evans
Piper & Marbury
900 1st Nat'l. Bank Bldg.
Light & Redwood Streets
Baltimore, Md. 21202

Dated: Aug. 30, 1965

s/ _____

Herbert W. Bryan
P. O. Box 1273
Charleston, W. Va. 25325

Attorneys for Petitioner

UNITED STATES DISTRICT COURT
for the
District of Maryland

BOSLEY, ET. AL., :
vs. : Civil Action File
ATLANTIC SEABOARD CORP. : No. 70-11-k

Judgment having been entered in the above entitled action on the 14th day of October 1971, against the Plaintiffs with costs, the clerk is requested to tax the following as costs:

B I L L O F C O S T S

Fees of the clerk	$ 15.00
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case	118.00
Fees for witnesses	931.80
Docket fees under 28 U.S.C. 1923	20.00
Costs incident to taking of depositions (original transcripts for depositions of Messrs. Bosley & Herbert; 180 pages)	148.72
Exhibits: Photographs (enlargements and copies)	88.82
Deposition Exhibits: Photographs (enlargements and copies)	62.40
Removal Bond	10.00
Viewing by Jury (transportation)	25.00
Luncheon for Jury	10.78
Total	$1,430.52

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State of Maryland :
County of Montgomery : ss:

I, William A. Mogel, an attorney for Defendant, do hereby swear that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy hereof was this day mailed to A. Frederick Taylor, Esq., 203 W. Chesapeake Ave., Towson, Md., with postage fully prepaid thereon.

Please take notice that I request the Clerk who will tax said costs on November 15, 1971 at 9 o'clock A. M.

s/ _____
William A. Mogel

Attorney for Atlantic Seaboard Corp.

Subscribed and sworn to before me this first day of November A. D. 1971 at Bethesday, Maryland.

s/ _____
Helen E. Thorpe
Notary Public

My Commission Expires:
July 1, 1974.

BOSLEY, et. ux.	:	IN THE UNITED STATES
	:	DISTRICT COURT
vs	:	FOR
	:	THE DISTRICT OF
Atlantic Seaboard	:	MARYLAND
Corporation, Inc.	:	Case No. 70-11-k

. . . . . .

MOTION TO STRIKE THE COSTS

Kenneth T. Bosley, et. ux., in proper person, move that the Court strike the cost in the above entitled case and for reasons therefore say:

1. That the costs of $1,430.52 for a cause of action arising out of a condemnation case by the defendant corporation to take the Lands of the plaintiffs' is confiscatory and unconstitutional.

2. That other good and sufficient reasons will be advanced at the hearing on this motion.

WHEREFORE, the plaintiffs pray that the motion to strike the costs be granted.

Kenneth T. Bosley

Phyllis B. Bosley

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BOSLEY, et. ux., Appellants •
•
v. • NO. 72-1453
•
ATLANTIC SEABOARD CORP., •
Appellee •

• • • • • • • • • • •

ANSWER TO MOTION FOR AN ORDER SUMMARILY AFFIRMING LOWER COURT

• • • • • • • • • • •

KENNETH T. BOSLEY, et. ux., in answer to the Appellee's Corporation motion for summarily affirming the Lower Court answers the motion, seriatum, as follows:

ISSUE

The issue as stated by the movant is denied. The appellant alledges and avers that the issue is whether excessive costs shall be taxed in a case arising out of, or growing from the roots of previous condemnation cases between the parties.

The second issue involved is whether excessive costs should be taxed allowing compensation to the corporate officers and officials of the condemnor corporation when the witnesses are also the sole corporate officials acting as party defendant when such case is not an antitrust action. (Each of these witnesses were under the employment of the defendant corporation at all times during the trial of the case.)

The third issue involved is should costs be allowed at all when the corporation's counsel has so conducted the case as to multiply the proceeding so as to increase costs unreasonably and vexatiously requiring that this attorney should be ordered by the Court to satisfy personally such excess costs.

FACTS

The facts as stated by the movement are

Herbert, an engineer who had made a topographical survey of the pipe line ground level before and after construction ground settlement.

Although counsel for Atlantic Seaboard informed the Court only two days would be needed for the trial, Mr. Jones's extensive cross-examination of the plaintiff's witness and direct examination of his five corporate officials prolonged the case to seven (7) days.

Thereafter, Atlantic Seaboard Corporation filed a verified bill of cost in the mount of $1,430.52. This bill included $88.82 for photographs taken by one of Atlantic Seaboard's office clerks. It also included $10.78 for the luncheon for the jury.

In addition, there was a charge of $62.40 for photograph exhibits to the deposition for the same photographs referred to above. A charge of $148.72 for extensive depositions of the plaintiff's two witnesses (length 180 pages); also a $118.00 charge for fees to obtain the transcript of the plaintiff testimony so that this could be used for extensive cross-examination.

Later, at a hearing requested by the plaintiff, Bosleys, the Lower Court properly struck out part of the excessive costs.

• • • • •

WHEREFORE, in answer to the motion heretofore filed, the Appellants move that the motion be denied, particularly since the witnesses for Atlantic Seaboard Corporation have become identifiable as a party of interest, and a brief or argument of defense shall be filed at or before the hearing on this motion.

Kenneth T. Bosley
and

Phyllis B. Bosley

CERTIFICATE OF SERVICE:

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Alfred A. Betz
Official Court Reporter
U. S. District Court
514 U. S. Courthouse Bldg.
Calvert & Fayette Sts.
Baltimore, Md. 21202 Tele: 727-7231

April 27, 1972

Mr. Kenneth Bosley
Box 334
Cockeysville, Maryland 21030

Re: Number 70-11-K Civil
Bosley vs. Atlantic
Seaboard Corporation

Dear Mr. Bosley:

Following is the information you requested on the above-mentioned case.

All witnesses were sequestered on Oct. 13, 1971.

Witnesses: Joseph E. Fisher
Employed by Atlantic Seaboard Corporation as Assistant Area Manager. Mr. Fisher's testimony began at approximately 10:00 a.m., Wednesday, October 13, 1971.

Alan Donaldson
Employed by West Virginia University as Professor of Geology. Mr. Donaldson's testimony began at approximately 12:15 p.m., Wednesday, October 13, 1971.

This is the extent of my connection with this case. If I can be of any further assistance, please let me know.

Very truly yours,

s/
Alfred A. Betz
Official Reporter

727-7299

512 Post Office Building
Baltimore, Maryland 21202

FRED SAPPERSTEIN
Official Court Reporter
United States District Court

April 28, 1972

Mr. Kenneth Bosley
Box 334
Cockeysville, Maryland 21030

Re: Bosley Vs. Atlantic Seaboard Corp. No 70-11-K Civil

Dear Sir:

Pursuant to our recent telephone conversation, the following is the information which I can supply you with:

WITNESSES: Russell M. Herbert
1209 E. 36th St.; Baltimore, Md. 21218
Surveyor

C. P. Brisley a.k.a. Pep Brisley
Employed by Atlantic Seaboard Corp.
as Vice-President of Operations

Donald C. Kitts
Employed by Atlantic Seaboard Corp.
as a Land Surveyor

B. H. Waterbury
Vice-President of the W.C. Pinkert & Co., Inc.; 1600 First National Bank Building; Baltimore, Maryland
Realitor

All witnesses were sequestered on October 12, 1971. In addition, Court started at 10 a.m. and adjourned at 5 p.m. on this day.

This is the extent of the information that I can supply to you since this was the only day I was on this case.

Yours truly,

s/
Fred Sapperstein

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APPENDIX F

DOCKET ENTRIES

Date 1970	
Jan. 5	(1) Petition of Defendant for Removal; (2) Bond for Removal; (3) Notice of Filing and (4) Copy of Declaration and Prayer for Jury Trial filed in the Circuit Court for Baltimore County, filed.
Jan. 12	(5) Answer, filed.
May 18	(6) Notice of Defendant of taking deposition of Kenneth T. Bosley, filed.
June 23	(7) Stipulation between counsel that Phyllis R. Bosley is hereby made a co-plaintiff along with her husband Kenneth T. Bosley in the within cause of action and that the answer heretofore filed shall stand as to both plaintiffs, and order (Kaufman, J.) approving same, filed.
Sept. 22	(8) Notice of Defendant of Taking Deposition of Russell M. Herbert, filed.
Sept. 28	(9) Deposition of Kenneth T. Bosley taken on Behalf of Both Defendants, filed. (Filed Separately)
Nov. 2	(9a) Defendant's Pre-trial Memoranda, filed.
Dec. 30	(10) Defendant's Memorandum in support of its Motion to Dismiss and Affidavit, filed.
1971	
Feb. 9	(11) Plaintiff's Affidavit Opposing Defendant's Motion to Dismiss, Filed.
Feb. 18	(12) Defendant's response to Plaintiffs' Affidavit opposing Defendant's Motion to Dismiss, filed.

Feb. 18	(13)	Affidavit of Joseph E. Fisher, filed.
June 21	----	Hearing on Motion of Defendant to Dismiss, before Kaufman, J.
June 21	----	Oral Motion of Plaintiff to file an Amended Complaint by July 2, 1971 "Granted" by the Court.
June 21	----	Motion of Defendant to Dismiss agrued and held subcuria.
June 21	(13a)	Second Affidavit of Joseph E. Fisher and Attachment, filed.
July 7	(14)	Amended Complaint, filed.
July 7	(15)	Plaintiff's Second Affidavit, filed.
July 9	(16)	Defendant's Motion to Dismiss Amended Complaint or in the Alternative Defendant's Motion for Summary Judgment, filed.
Sept. 24	(16a)	Order (Kaufman, J.) "Denying" Defendant's Motion to Dismiss, filed. (see pleading No. 16)
Sept. 27	----	Pre-trial Conference, before Kaufman, J.
Sept. 27	(17)	Pre-trial and Amended Pre-trial Orders, Kaufman, J., filed.
Oct. 4	----	The Court propounded questions on Voir Dire to the Jury panel
Oct. 4	----	Jury empanelled and sworn before Kaufman, J.
Oct. 4	----	Not Concluded.
Oct. 5	----	Not Concluded.
Oct. 5	(18)	Deposition of Russell M. Herbert taken on behalf of Defendant, filed. (filed separately)
Oct. 6	----	Not Concluded-to be resumed on Tuesday, October 12, 1971 at 10.

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Oct. 6	(19)	Memorandum (Kaufman, J.) Re: Testimony of Mr. Bosley, filed.
Oct. 12	----	Not Concluded.
Oct. 13	----	Oral Motion of Defendant for a Directed Verdict made at conclusion of all testimony-Motion "denied" by the Court.
Oct. 13	----	Argument of Counsel.
Oct. 13	----	Court's Charge to the Jury. (Interrogatories propounded to Jury)
Oct. 13	----	Bailiff Sworn: James Moser
Oct. 13	----	Verdict: For the Defendant
Oct. 13	----	The Jury then Answered question: No. 1 - NO
Oct. 13	(20)	Questions to the Jury and Answer thereto returned to the Court and signed and filed.
Oct. 14	(21)	Judgment on Verdict: That Judgment be and is hereby entered in favor of the Defendant against the Plaintiffs with costs, Order (Clerk) with the Approval of the Court (Kaufman, J.) thereon, filed.
Nov. 3	(22)	Defendant's Bill of Costs, filed.
Nov. 18	(23)	Motion of Plaintiffs to strike the costs and Request for hearing, filed.
Nov. 29	(24)	Defendant's Opposition to Plaintiffs' Motion to strike the costs, Memorandum and Attachment, filed. (copies to the Court)
Dec. 27	(25)	Plaintiffs' exceptions to Defendant's Memorandum and Exhibits A and B, filed. (Copies delivered to the Court)
1972		
Feb. 29	(26)	Group of correspondence between Court and Counsel, filed.

Feb. 29	----	Hearing before the Court Re: Court Costs, before Kaufman, J.
Feb. 29	(27)	Order (Kaufman, J.) that judgment be entered in favor of the Defendant against the plaintiff in the amount of $1,125.52 for costs, filed.
Mar. 21	(28)	Notice to the Clerk by Plaintiff that the case will be conducted in proper person by the plaintiffs and that plaintiffs counsel Mr. Taylor, retired from the case immediately after trial in October, 1971, filed.
Mar. 28	(29)	Notice of Appeal of Plaintiffs, filed (copies mailed by Clerk 3-30-72)
Apr. 3	(30)	Motion of Defendant for an Order to compel Plaintiffs to file a Bond for costs, a supersedeas bond and to obtain a transcript for inclusion in the Record, filed.
Apr. 10	(31)	Appeal Bond, filed.
Apr. 11	(32)	Plaintiffs-Appellants answer to Defendant's-Appellee's motion for an order, filed.
Apr. 18	(33)	Agreement as to the Record on Appeal for taxing of costs, filed.

COPY BOUND CLOSE IN CENTER

CERTIFICATE OF SERVICE

We hereby certify that on this day of november, 1972, that copies of the petition for a Writ of Certiorari were mailed by first class mail postage prepaid to Tilford A. Jones, William A. Mogel and William Morgan, Attorneys for Atlantic Seaboard Corporation; Suite 301; 7316 Wisconsin Avenue; Bethesda, Maryland 20014.

Kenneth T. Bosley

AFFIDAVIT OF SERVICE

We hereby certify that on this day of November, 1972 that copies of the petition for a Writ of Certiorari were mailed to the following agencies of the United States since the Constitutionality of Acts of Congress affecting the public interest are drawn in question and 28 U.S.C. Section 2403 may be applicable:

1. Solicitor General, Department of Justice
   Washington, D. C. 20530
2. Federal Environmental Protection Agency
   Washington, D. C. 20530
3. Federal Power Commission
   Washington, D. C. 20530

Kenneth T. Bosley

OPINION OF THE COURT OF APPEALS:

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 72-1453

Phyllis B. Bosley and Kenneth T. Bosley
Appellants

versus

Atlantic Seaboard Corporation
Appellee

Appeal from the United States District for the District of Maryland. Kaufman, Judge.
(Decided August 7, 1972(

Before BOREMAN, Senior Circuit Judge, and Winter and Craven, Circuit Judges

Phyllis B. Bosley, et.ux. pro se;
Tilford A. Jones for Appellee.

Per Curiam:

This appeal is taken from an order of the District Court granting the defendant-appellee, Atlantic Seaboard Corporation, costs in the amount of $1, 125.52 pursuant to Rule 54 (d) of the Federal Rules of Procedure.

We have examined the record, the appellee motion for summary affirmance and the appellants' answer in oposition to said motion and conclude that the District Court did not abuse its discretionary powers in allowance of costs.

Accordingly, we dispense with oral argument, the appellee's motion for summary affirmance is granted and the judgement of the District Court is affirmed.

Affirmed.